

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3430 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARSHABEN BHANUBHARTHI

Versus

STATE OF GUJARAT

Appearance:

MRS DT SHAH for Petitioner

MS PS PARMAR for Respondent No. 1

MR AD MITHANI for Respondent No. 2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/07/97

ORAL JUDGMENT

#. The petitioner, daughter of deceased Shri Bhanubharthi Jitubharthi, who died while in Government service on the post of Talati-cum-Mantri, filed this Special Civil Application and prayer has been made for quashing the order dated 7.1.92, annexure 'F' and further for issuance of directions to the respondents to appoint

petitioner as Talati-cum-Mantri and/or any other suitable post in lieu of petitioner's late father with other consequential benefits.

#. Under the order impugned, the respondent No.1 has declined to give employment to the petitioner on compensatory ground. The learned counsel for the petitioner contended that as the father of the petitioner has died while in service, the respondents are under legal obligation to give employment to the petitioner on compensatory ground.

#. I have given my thoughtful considerations to the submissions made by learned counsel for petitioner.

#. The petitioner's father has expired on 22.11.83. It is not in dispute that the petitioner's father was employed as Talati-cum-Mantri and he died while in service. At the time of death of her father the petitioner was aged 13 years. It is the case of petitioner that her widow mother has approached the respondents No.3 and 4 for employment by an application. Unfortunately, that application was lost and a copy thereof was also not kept by the widow mother. It has further been stated that the widow mother has not received any reply and by that time the petitioner had again approached the respondent No.4 with a plea that instead of her mother, should be given employment as by that time, the petitioner had completed her graduation.

#. Very conveniently, a story has been manufactured that the petitioner's mother wanted to get employment on compensatory ground, which is too difficult to be believed. In case really the petitioner's mother would have been in need of employment, she should not have slept over the matter conveniently till her daughter completes graduation. The averments made in para-4 of the Special Civil Application very clearly give out that the plea taken by petitioner is manufactured and no application whatsoever has been made by the widow mother of the petitioner for employment on death of her husband. Secondly, this plea has been taken only to give out explanation of delay in application of the petitioner for employment on compensatory ground. One more thing which is clearly borne out from this averment is that the petitioner intended to use compensatory employment as a source of recruitment. The main object of compensate employment is to enable the family of the deceased employee to prevent tide of sudden crises. The object is not to give to the member of such family, a post, much less post held by the deceased employee. Mere death of

an employee in harness does not entitle his family to such source of livelihood. Before giving such employment, Government has to examine the financial condition of the family of the deceased and it is only after it is satisfied that but for the provisions of employment, the family will not be able to meet the crises, a job is to be offered to the eligible member of the family. The employment on compensate ground is provided in Government service and the object being to relieve the family of financial destitute and to help the family to get over the emergency, such employment as a matter of course and irrespective of financial condition of the deceased is legally impermissible. In this case, the fact that the mother has not prayed for compensate employment on the death of her husband goes to show that family of the deceased has not come under any financial destitution or crises nor it needed any help to get over emergency. As stated earlier, the object of compensatory employment is to enable the penurious ones of the deceased employee to tide over the sudden financial crises and not to provide employment and as such, the fact that the petitioner's mother had not applied for employment immediately after the death of employee goes heavily against the petitioner. In case it would have been really a case of sudden financial crises in the family of the deceased employee, certainly the mother of the petitioner would not have left any stone unturned to get compensate employment. She could have come before this Court in case she really intended to have employment and where but for the employment, the family could not have been relieved of the financial destitution. The very fact that the petitioner has only applied and that too after about seven years of the death of her father goes to show that the compensate employment in Government service is sought to be claimed as a vested right. The compensate employment cannot be granted after lapse of reasonable period and the reason is very obvious; one of the most import considerations for giving employment on compensatory ground is that the death of the employee resulted in the family, financial crises and the family will not bee able to meet out such crises, but for the provisions of employment. That question has to be considered within reasonable proximity of the death of employee and not after seven or eight years, and now after fifteen years of the death of the employee. Consideration for such employment is not a vested right which could be exercised at any time in future, the object being to enable the family to get over the financial crises which it faces at the time of the death of the sole bread winner. The compensate employment cannot be claimed and offered after whatever lapse of

time and after the crises is over. That is exactly what the petitioner is attempting to do in the present case, i.e. to get employment as if it is her vested right and further after considerable lapse of time after the death of her father. Now if such a claim is accepted, then it will certainly defeat this beneficial socio-economic provision made for giving employment in the Government service to one of the family members of deceased employee who dies while in service. The very object and purpose of this benevolent socio-economic provision shall be defeated if the claim of the nature as made by the petitioner, in this Special Civil Application, is granted.

#. In the result, this writ petition fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court, stands vacated. No order as to costs.

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(sbl)